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18 Attorneys for Defendant
19 **JOHN LEE BERRY, III**

20
21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

23
24 UNITED STATES OF AMERICA,

25 Case No. 14-CR-582 PJH

26 Plaintiff,

27 **DEFENDANTS' PROPOSED JURY**
28 **INSTRUCTION AND BRIEF IN**
29 **SUPPORT**

30
31 ALVIN FLORIDA, JR.,
32 ROBERT ALHASHASH RASHEED,
33 JOHN LEE BERRY, III
34 REFUGIO DIAZ and
35 STEPHAN ALEXANDER FLORIDA.

36
37 **Trial Date: October 31, 2016**
38 **Time: 8:30 a.m.**
39 **Court: The Hon. Phyllis J. Hamilton**

40
41 Defendants.

42
43 Defendants respectfully request that the attached jury instruction be provided to the jury
44 and submit the following legal brief in support.

45
46 **BRIEF**

47
48 The legal concept at issue is called the "single entity" rule. Under section 1 of the
49 Sherman Act a company cannot conspire with itself. *Copperweld Corp. v. Independence Tube*
50 *Corp.*, 467 U.S. 752, 769 (1984). The Ninth Circuit has applied the "single entity" rule in a

1 variety of contexts. It applies to a company and its officers, employees, and wholly owned
2 subsidiaries. *Copperweld*, at 769, 771. It also applies to subsidiaries controlled by a common
3 parent. *Thomsen v. W. Elec. Co.*, 680 F.2d 1263, 1265-66 (9th Cir. 1982), firms owned by the
4 same person, *Las Vegas Sun, Inc. v. Summa Corp.*, 610 F.2d 614, 616, 618 (9th Cir. 1979), and
5 a firm owned by a subset of the owners of another, *Sunkist Growers, Inc. v. Winckler & Smith
Citrus Prods. Co.*, 370 U.S. 19, 29 (1962). It applies to principal-agent relationships,
6 *Calculators Haw., Inc. v. Brandt, Inc.*, 724 F.2d 1332, 1336 (9th Cir. 1983), and to partnerships
7 or other joint arrangements in which persons who would otherwise be competitors pool their
8 capital and share the risks of loss as well as the opportunities for profit. *Maricopa County Med.
Soc'y*, 457 U.S. at 356; *see also Hahn v. Or. Physicians' Serv.*, 868 F.2d 1022, 1029 n.5 (9th
9 Cir. 1988). In *Williams v. I.B. Fischer Nevada*, 794 F. Supp. 1026 (D. Nev. 1992), *aff'd*, 999
10 F.2d 445 (9th Cir. 1993) (per curiam), the court found that a franchisor and its franchisees were
11 a single entity because the inherent nature of the relationship among a franchisor and its
12 franchisees was a "non-competitive environment."

13 "The theme in these cases is economic unity. Where there is substantial common
14 ownership, a fiduciary obligation to act for another entity's economic benefit or an agreement
15 to divide profits and losses, individual firms function as an economic unit and are generally
16 treated as a single entity." *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d 1133, 1148 (9th
17 Cir. 2003). Courts have required that "the constituent entities be neither actual nor *potential*
18 competitors or that the nature of the relationship be inherently noncompetitive." *Id.* at 1149
19 (internal citations omitted) (emphasis in original). "The crucial question is whether the entities
20 alleged to have conspired maintain an 'economic unity,' and whether the entities were either
21 actual or potential competitors. *Jack Russell Terrier Network v. Am. Kennel Club, Inc.*, 407
22 F.3d 1027, 1034 (9th Cir. 2005).

23 The evidence presented at trial suggests that (1) Alvin Florida employed Refugio Diaz,
24 John Berry, and, at one point, Robert Rasheed; (2) all of the alleged payouts to Diaz and Berry
25 for "rounds" that Diaz and Berry allegedly participated in were paid directly to Florida; (3) the
26 alleged coconspirators testified that all of the alleged payouts for "rounds" that Diaz or Berry
27

1 participated in and won would come directly from Florida; and, (4) Diaz and Berry acted as
2 representatives of Florida at the public auction and subsequent “rounds”.

3 Florida, Diaz, and Berry acted as one “economic unit” and their relationship was at all
4 times “inherently noncompetitive”. Thus, the reasoning behind the single entity rule should
5 apply to the relationship between Florida, Diaz, and Berry (and to a lesser degree, Rasheed) and
6 an instruction on the rule should be provided to the jury.

7
8 Dated: November 9, 2016

Respectfully submitted,

9 _____/s/
10 SHAFFY MOEEL
11 Attorney for Defendant
12 ALVIN FLORIDA, JR.

13 _____/s/
14 STEVEN GRUEL
15 Attorney for Defendant
16 ROBERT ALHASHASH RASHEED

17 _____/s/
18 JOHN FORSYTH
19 Attorney for Defendant
20 JOHN LEE BERRY, III

21 _____/s/
22 EDWIN PRATHER
23 Attorney for Defendant
24 REFUGIO DIAZ

SINGLE ENTITY RULE

Members of the same “economic unit” cannot conspire with each other to rig bids. In order to find that the defendants, Alvin Florida, Jr., Robert Rasheed, Refugio Diaz, or John Berry, III, were members of the same “economic unit” you must find that:

(1) The defendants, or any combination of defendants, were not actual or potential competitors at the Alameda County foreclosure auctions;

AND

(2) The defendants, or any combination or defendants, shared a unity of economic interest at the Alameda County foreclosure auctions.